



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC, LRE, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) of January 3, 2021, pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they were handed the 10 Day Notice by the landlord on January 3, 2021, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that the tenant handed them a copy of the tenant's dispute resolution hearing package on January 7, 2021, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the tenant confirmed that they had received the landlord's written evidence, I find that the landlord's written evidence was served to the tenant in accordance with section 88 of the *Act*. The tenant provided no written evidence to support their application.

At the hearing, the tenant testified that they have also applied to cancel a second 10 Day Notice issued by the landlord on February 20, 2021. They said that the consideration of that Notice is scheduled to be heard on July 12, 2021 (see above).

During the hearing, they referred to evidence that they had provided with respect to the second 10 Day Notice. I noted that I can only consider written evidence supplied by the parties for the current hearing of the tenant's application to cancel the 10 Day Notice of January 3, 2021; however, I also note that the tenant has not yet provided any written evidence for consideration at the July 12, 2021 hearing, either.

#### Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

On September 13, 2020, the parties signed a month-to-month tenancy agreement for a rental unit in a multi-level rental building. According to the terms of the Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlord, the tenant was to obtain occupancy of the rental unit on October 1, 2020. Monthly rent is set at \$1,800.00, payable in advance on the first of each month. The landlord continues to hold the \$900.00 security deposit paid by the tenant on September 15, 2020.

On the 10 Day Notice of January 3, 2021, the landlord identified \$1,800.00 as the amount owing as of January 1, 2021. At the hearing, the landlord said that at that time there was another \$400.00 owing from unpaid rent for December 2020. The landlord also provided a copy of the second 10 Day Notice of February 20, 2020, in which again \$1,800.00 was identified as owing as of February 1, 2021. In their written evidence and in their sworn testimony, the landlord maintained that they have not received any payments from the tenant since they issued the first 10 Day Notice on January 3, 2021. As of the date of this hearing, the landlord maintained that the tenant owed them \$400.00 from December 2020, and \$1,800.00 for each of January, February and March 2021. The total amount the landlord claimed was presently owing was \$5,800.00.

The landlord said that on January 9, 2021, the tenant tried to give the landlord \$200.00. This would have been after the expiration of the five day period for paying all of the rent demanded in the first 10 Day Notice. The landlord said that they told the tenant at that time that this was not the amount owing, as the landlord claimed that \$200.00 was still owing for December plus all of the January 2021 rent.

Much of the landlord's written evidence dwelled on other features of this tenancy,

including letters from other tenants in this building who were complaining about many of the tenant's behaviours and activities. I advised the parties that these letters of complaint had no bearing on the primary issue before me, that being whether or not the tenant paid rent in full that was shown as owing in the first 10 Day Notice, or whether the landlord refused to accept payment by the tenant within 5 days of the 10 Day Notice being issued to the tenant.

The tenant's primary assertion with respect to the first 10 Day Notice was that they tried to pay the landlord the amount shown as owing on the first 10 Day Notice when they handed the landlord the dispute resolution hearing package on January 6, 2021. They maintained that their boss witnessed their attempt to make this payment and the landlord's refusal to accept the tenant's payment. The tenant advised that their boss knew the time and call-in details for this hearing and was planning to provide testimony to that effect at this hearing. Although the tenant tried to contact this potential witness and I had the teleconference operator call the potential witnesses' phone number, this individual did not answer the call from the teleconference operator, nor did they call into this hearing. We proceeded without any witness testimony.

At the hearing, the tenant said that they had tried to pay the amount identified as owing on the second 10 Day Notice, as well, but again the landlord refused to accept the payment. They said that they had text messages to confirm their attempts to pay rent for both January and February, and that they had submitted the February text messages for consideration at the July 2021 hearing of their application to cancel the second 10 Day Notice. As noted above, the tenant has not yet provided any written evidence for consideration at the July 2021 hearing.

In their application for dispute resolution, the tenant did raise concerns that the landlord did not have the rental unit available for occupation on October 1, 2020, that they were patient with the landlord until October 13, 2020, and should only have been held responsible for rent as of October 15, 2020, by which time they had occupied the rental unit. They maintained that because they were unable to take occupancy of the rental unit until October 15, 2020, that the due date for monthly rent should be changed to the 15<sup>th</sup> of each month and not the first as was identified in the Agreement. In their application, they also raised concerns about the landlord's use of a storage room that they believed they were entitled to use as part of their Agreement.

In their written evidence and in their sworn testimony, the landlord asserted that they gave the tenant the key to the rental unit on October 1, 2020, as required by their Agreement. They said that the tenant commenced moving into the rental unit during the

first weekend of October 2020 (i.e., October 2, 3 and 4, 2020). They also supplied multiple statements from people living nearby who attested to the tenant having moved into and occupied the rental unit during the first weekend of October 2020. The landlord also testified that it would be very unusual behaviour for a landlord to refuse offers to pay a landlord rent, especially now that the unpaid rent exceeds \$5,000.00.

### Analysis

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.” Although the tenant may believe that they were not required to pay monthly rent until the 15<sup>th</sup> of each month, they produced nothing that would entitle them to alter the terms of the Agreement, by paying monthly rent on the 15<sup>th</sup> instead of the first as was specified in the Agreement.

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent “by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”

Section 46 (4) (b) of the *Act* provides that upon receipt of a 10 Day Notice to end tenancy the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant makes such an application, as occurred in this case, the onus shifts to the landlord to justify, on a balance of probabilities, the reason set out in the 10 Day Notice.

In this case, the tenant maintained that they offered to pay all the rent identified as owing on the first 10 Day Notice when they handed the landlord their dispute resolution hearing package. The tenant said that the landlord refused their offer at that time. Although they alleged that they could provide an eyewitness to testify to the landlord’s refusal of that offer to pay \$1,800.00 in cash to the landlord, that witness did not attend this hearing, nor did they provide any written statement to support the tenant’s assertion in this regard.

By contrast, the landlord said that the tenant only offered to pay \$200.00 of the amount owing, which would not have even looked after all of the rent owing from December 2020, on January 9, 2021. The landlord provided straightforward testimony that the tenant has not paid anything to the landlord since the first 10 Day Notice was issued.

The landlord testified that they would not willingly turn down an offer by a tenant to pay \$5,800.00 that is currently owed by the tenant.

Based on a balance of probabilities, I find that the landlord provided much more compelling testimony and written evidence than was provided by the tenant. Although the tenant claimed to have a witness available to confirm their account of their rejected attempt to pay their rent in January 2021, as well as text messages to that effect, the tenant produced nothing other than their own sworn testimony that they tried to pay the rent, but the landlord rejected that request. I also note that the tenant's alleged attempt to pay the January 2021 rent would have occurred after they had already applied for dispute resolution and were in the process of serving the landlord with their dispute resolution hearing package. Given that the tenant has not made any payments to the landlord since the 10 Day Notice was issued on January 3, 2021, and the landlord could have accepted payments for use and occupancy only and not to extend this tenancy, I find that the tenant failed to pay the \$1,800.00 identified as owing in the first 10 Day Notice within five days of being served with that Notice. I also find that the tenant has not provided sufficient evidence to confirm their claim that the landlord rejected their attempt to pay the \$1,800.00 in full within five days of the tenant's receipt of the 10 Day Notice.

For these reasons, I dismiss the tenant's application.

Section 55(1) of the *Act* reads as follows:

*If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Section 46(2) of the *Act* requires that "a notice under this section must comply with section 52 [form and content of notice to end tenancy]. I am satisfied that the landlord's 10 Day Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to a 2 day Order of Possession, since the effective date on the first 10 Day Notice passed on January 14, 2021. The landlord will be given a formal Order

of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the tenant has been unsuccessful in their application, they bear the cost of their filing fee.

Since this tenancy has already ended, and the tenant must vacate the rental unit very soon, I dismiss the remainder of the tenant's application without leave to reapply.

### Conclusion

I dismiss the tenant's application in its entirety without leave to reapply. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This final and binding decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 30, 2021

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Residential Tenancy Branch